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COMMITTEE ON  
HOUSE ADMINISTRATION

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The Honorable William M. Thomas  
Chairman  
Committee on Administration  
U.S. House of Representatives  
Washington, DC 20515-0157

Dear Mr. Chairman:

This is in response to your request for the views of the Department of Defense on H.R. 5174, 106th Congress, a bill "To amend titles 10 and 18, United States Code, and the Revised Statutes to remove the uncertainty regarding the authority of the Department of Defense to permit buildings on military installations and reserve component facilities to be used as polling places in Federal, State, and local elections for public office."

The Department of Defense opposes this legislation.

The Department has a longstanding policy prohibiting the use of military installations as polling sites for elections. This policy is based on sound public policy of maintaining strict separation between the military and the political process. The policy of separating the military and partisan politics is critically important to maintaining public support for and confidence in our Armed Forces, as well as maintaining good order and discipline within military ranks.

The principle of separating the military from the political process is also reflected in two federal criminal statutes. 18 U.S.C. § 592 provides that:

[w]hoever, being an officer of the Army or Navy, or other person in the civil, military or naval service of the United States, orders, brings, keeps, or has under his authority or control any troops or armed men at any place where a general or special election is held, unless such force be necessary to repel armed enemies of the United States, shall be fined under this title or imprisoned not more than five years or both. . . .

Similarly, 18 U.S.C. § 593 subjects members of the Armed Forces to criminal penalties if they "impose or attempt to impose any regulations for conducting any general or special election in a State, different from those prescribed by law," or "interfere in any manner with an election officer's discharge of his duties." Placement of voting sites on military installations in which "troops or armed men" are likely to come into close contact with voters is fundamentally incompatible with the concept of maintaining separation between the military and politics.

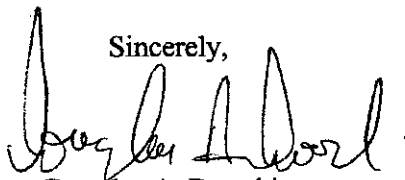


If enacted, H.R. 5174 would reverse Department of Defense policy by authorizing the use of military installations as polling places. We strongly disagree that it is appropriate for the fundamental political activity of voting to take place at locations that the Department of Defense strives to make politically neutral and nonpartisan. The proposed legislation also would not effectively amend the criminal statutes referenced above to relieve military personnel from potential criminal liability. Specifically, the amendments to the criminal statutes proposed in section 1(c) of H.R. 5174 would only clarify that it is not a crime for polling places to be placed on military installations. It would not address at all the placement of troops or armed men at polling places. It would not be practical simply to prohibit military personnel from approaching or entering a polling place on a military installation during voting hours. The commander of a military installation must at all times have complete control over the facilities within his or her authority. It is possible that circumstances could arise that would require a commander to order military personnel to enter a building designated as a polling site if that building is located on a military installation. We believe it is therefore prudent to retain the prohibition on the use of military buildings as polling places.

We recognize that some installations have overlooked the Department's policy on this issue in the past and that some military facilities have been used as polling places in some localities. In some cases, short-term waivers of the policy have been granted if an alternative location could not be identified in time to avoid disruption to an upcoming election. In such cases, local election officials have been advised to designate a new polling place as soon as possible. Furthermore, section 121 of the Military Construction Appropriation Act for Fiscal Year 2001 requires that military facilities that have been used as polling places over recent years must be permitted to be used as polling places for the November election. Enactment of H.R. 5174 is not necessary, therefore, to relieve any possible inconvenience to voters in the November election resulting from enforcement of the Department of Defense policy.

Finally, we want to point out that our policy does not apply to National Guard armories or other Guard facilities. These buildings are subject to the control of state Governors through their Adjutant Generals, not the Department of Defense.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for consideration of the Committee.

Sincerely,  
  
Douglas A. Dworkin

cc: The Honorable Steny H. Hoyer  
Ranking Member